IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 799 of 2006

Mohammed Kaisar Ansari ..Petitioner

vs.

1. The Municipal Corporation
of Greater Bombay & Ors. ..Respondents.

Shri V.R.Dhond i/b Shri Sandeep Kuru for petitioner.
Smt.Nisha Dabhode for respondent no.1.

CORAM: S.B.MHASE J.
28th March, 2006

P.C.

1. Rule. Rule returnable forthwith by consent of the parties.

2. The order passed in the Notice of Motion No.3030 of 2004 in L.C.Suit No.4785 of 2003 pending before the City Civil Court at Bombay on 8th February, 2005 is challenged in this petition. The said Notice of Motion was taken out under Order 39 Rule 2-A of the Code of Civil Procedure for flouting the order passed by the City Civil Court at Bombay in Notice of Motion No.3969 of 2003. Therefore, at the most the Court could have found that there is no violation of any interim orders and the Notice of Motion No.3030 of 2004 could have

been dismissed. The grievance of the learned Counsel is that, however, the City Civil Court has overlooked this aspect and has observed in the final order that "the suit does not survive for Kismat Bread Shop and it survives only for Gulshan Provision Stores". Thus, the result is that while dismissing the Notice of Motion, which was initiated for breach of interim order passed by the City Civil Court, the City Civil Court also disposed of the suit in respect of "Kismat Bread Shop" when that was not the subject matter of the Notice of Motion. Whether the suit survives or not is the separate question to be considered by the City Civil Court. The learned Counsel for the respondents made a feeble attempt to support the order. However, ultimately conceded that the respondents have no objection to struck down the following portion from the order:

> "The suit does not survive for Kismat Bread Shop. It survives only for Gulshan Provision Stores."

It has to be observed that maintainability of the suit is separate issue to be considered after giving an opportunity of hearing to the

parties and that cannot be considered while disposing of the Notice of Motion for breach of the interim order of the Court under Order 39 Rule 2A of the Code of Civil Procedure. I need not ponder much upon this issue since there is concession given by the learned Counsel for the respondents. Therefore, the following order is passed.

> "From order dated 8th February, 2005 dismissing the Notice of Motion No.3030 of 2004 in L.C.Suit No.4785 of 2003 following portion shall be deleted.
>
> "The suit does not survive for Kismat Bread Shop. It survives only for Gulshan Provision Stores."

Needless to say that any observations from the body of the order which are pertaining to the above referred directions also stand deleted from the said order and the City Civil Court is further directed to decide the main Notice of Motion No.3969 of 2003 on its merits after hearing both sides. With these directions the petition is disposed of. Rule is made

absolute accordingly.

(S.B.MHASE J.)